

LABOUR DEPARTMENT

The 24th March, 1987

No. 9/2/87-6Lab./1704.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Goldy Hyx. Poultry Farms Ltd., Bega, Gannaur (Sonepat).

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 29 of 1985

Between

SHRI KARAM VIR SINGH, WORKMAN AND THE MANAGEMENT OF M/S GOLDY XHY. POULTRY FARMS LTD., BEGA, GANNAUR (SONEPAT)

Shri Raj. Kumar, A.R. for the workmen.
Shri S. Kaushal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workmen Shri Karam Vir Singh and Shri Satya Pal and the management of M/s Goldy Hyx. Poultry Farms, Bega, Gannaur (Sonepat), to this Court, for adjudication,—vide Haryana Government Gazette Notification numbers 7546-51 and 7539-44, dated 28th February, 1985 :—

Whether the termination of services of Shri Karamvir Singh and Shri Satya Pal is justified and in order ? If not, to what relief are they entitled ?

2. On receipt of the references bearing numbers 29 of 1985 and 30 of 1985, notices were issued to the parties. Both the parties appeared. Since in these two references common questions of law and facts were involved, so, these were ordered to be consolidated,—vide my order dated 4th September, 1985. I further directed that proceedings shall be recorded in reference number 29 of 1985.

3. There are two petitioners Sarvshri Karam Vir Singh and Sat Pal. Their common case is that they were employed with the respondent on permanent basis for the last about four years on monthly wages of Rs. 416 and the management chose to terminate their services unlawfully on 1st October, 1984, without issuing any charge-sheets or show-cause notice and as such, order of termination was violative of the provisions of section 25-F and G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). So, both the petitioners have claimed reinstatement with continuity of service and full back wages.

4. The refrain of the replies filed in both these references is the same. It is alleged that the present references are not against the proper party and as such, the same are bad in law and that this Court has no jurisdiction to try the present references and that no cause of action has accrued with the petitioner in the year 1983. On merits, it is alleged that the petitioner's monthly wages were Rs 416 and not Rs. 500 (as alleged in the Claim Statement filed in the Court). It is denied that their termination was effected in the year 1983. It is admitted that the respondent was running business of poultry farming, which has since been closed and now, his business activity is confined to running hatchery and trading. The applicants were offered pay for notice period and retrenchment compensation as admissible but on their refusal, notice and amount was sent by post, which the petitioners again refused to receive. So, it is alleged that there was no infraction of section 25-F of the said Act. It is further alleged that the respondent has not started poultry operation at all and there is no question of issuing any notice to the petitioners for re-employment and that retrenchment was done as per rule of seniority.

5. On the pleadings of the parties, the following issues were settled for decision by me on 23rd July, 1985 :—

1. Whether the reference is bad in law ?
2. Whether this Court has no jurisdiction to try this reference ?
3. Whether no cause of action has accrued in favour of the applicant ?
4. As per terms of reference.

6. In support of his case, both the petitioners appeared as WW-1 and WW-2 and the respondent examined MW-1 Shri K.L. Viz., MW-2 Shri Jagdish Parshad Tiwari and MW-3 Shri Arun Kumar, its Director.

7. Learned authorised representatives of the parties heard. My findings on the issues framed are as below :—

Issue No. 2

8. This issue was not pressed on behalf of the respondent. So, the same is answered against the respondent.

Issue No. 1

9. The learned authorised representatives of the respondent Shri Kaushal contended that since the petitioners were retrenched from service through a lawful order after following the proper procedure, and the present references are confined to the justifiability or otherwise of the order of termination actual controversy before the Court is beyond the term of reference and as such, the present references are bad in law. In support of his contention he relied upon 1984 ILLN 297 between Sita Ram Vishnu Shirodhkar and Administrator, Government of Goa and others. Though, there is some force in this contention, because the clear cut case of the respondent is that the petitioners were retrenched from employment after following the proper procedure laid down in the said Act. This aspect of the controversy, I shall take up while disposing issue No. 4 but at the moment suffice it to say since the parties have adduced evidence, I am not inclined to dismiss the references on the ground that the same are bad in law.

Issue No. 3 :

10. On this issue also the learned authorised representative of the respondent took a cue from the Claim Statement filed in the Court dated 6th May, 1985, in which, it is alleged that services of the petitioners were terminated by way of retrenchment in the year 1983. In the demand notice raised with the Labour Department the date of termination given is 1st October, 1984. Besides that in the demand notice other pleas have been taken, which are missing from the demand notice. The plea is too technical to merit recognition.

Issue No. 4 :

11. In my opinion, there is a complete confusion in the mind of the petitioners about the date of alleged termination. In the demand notice raised with the Labour Department, it is alleged that their services were terminated on 1st October, 1984. In the claim statement filed in the Court dated 6th May, 1985, they alleged that their services were terminated by way of retrenchment in the year 1984. But in the Court when they appeared as WW-1 and WW-2 they stated that their services were terminated on 30th September, 1984. This means that there are three versions before this Court regarding date of termination/retrenchment. Similarly the petitioners were confused about the wages being paid to them. In the demand notice and in the Court they stated that their wages were Rs. 416 p.m. but in the claim statement they alleged their wages to be Rs. 500 p.m. Even these discrepancies can be ignored but in the present case, the respondent followed the proper procedure laid down in the Act in retrenching the services of the petitioner. Prior to retrenchment a notice was pasted on the notice board about the employees to be retrenched and the reasons for the same were also given. The said notice is dated 29th August, 1984, copy of which is Ex. MW-1/2. The name of the petitioners figure at serial number 2 and so on the said list. Thereafter, retrenchment compensation as envisaged under section 25-F of the said Act was calculated and was offered to the petitioners, which they declined to accept, which is borne out from the statement made by the petitioners in the Court. Shri Karamvir petitioner when he appeared as WW-1 stated that he received notice for retrenchment by post but refused to accept it. He similarly stated that he received the money order but he did not accept the same. Shri Satya Pal petitioner when he appeared as WW-2 was more candid in his admission. He stated that retrenchment notice M-1 was received by him but he refused to accept the same and so the money-order was received by him which he refused to accept. He further stated that the management offered the amount to him but since he wanted the job and not the amount he declined to accept the same. In support of his plea the management has examined three witnesses. All of them have proved the case of the respondent to the hilt. As a matter of abundant caution the respondent sent copy of the notice to the Labour Commissioner, Haryana, Chandigarh. In that context, the respondent examined Shri Jagdish Parshad. He stated that he has brought retrenchment notice of the petitioners received from the respondent, copies of the same are Ex. MW-2/1 and MW-2/2 and that the respondent also sent copy of the notice,—vide which retrenchment compensation was calculated and offered to the petitioners and also a copy of the seniority list prepared. That would mean that the respondent did all it could to comply with the mandatory provisions of section 25-F of the said Act but the petitioners were adamant in not accepting the notice or retrenchment compensation, because they wanted to hang on to the job. Reasons for retrenchment are also valid because the respondent has taken a decision to wind up the poultry section

of the farm. So, there is no escape from the conclusion that there were no termination of services of the petitioners and the respondent lawfully retrenched the services of the petitioners, who were offered retrenchment compensation and other dues, which they refused to accept and as such, the petitioners are not entitled to any relief. The references are answered and returned accordingly with no order as to cost. A copy of this order be placed upon the file of reference number 30 of 1985.

Dated the 23rd February, 1987.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 29-85/418, dated 5th March, 1987

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/2/87-6Lab./1706.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak, in respect of dispute between the workman and the management M/s Administrator, Municipal Committee, Bhiwani.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 29 of 1986

between

SHRI DHARAMBIR, WORKMAN AND THE MANAGEMENT OF M/S ADMINISTRATOR,
MUNICIPAL COMMITTEE, BHIWANI

Shri Harish Singal, A.R. for the workman.

Shri R.S. Tanwar, ADA for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Dharambir and the management of M/s Administrator, Municipal Committee, Bhiwani, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 5509-14, dated 7th February, 1986 :—

Whether the termination of services of Shri Dharambir, son of Shri Mai Lal is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was working with the respondent since the year 1973 and was made regular on 1st January, 1983, but his services were terminated on 1st June, 1985, without any reason, which order was illegal and unlawful and as such, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the claim is frivolous and that the petitioner is estopped from filing the same by his acts and conduct and that no reference is maintainable without a prior notice under section 80 of the Code of Civil Procedure and that this Court has no jurisdiction to hear the present controversy and that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). On merits, it is alleged that the petitioner has not been employed regularly since the year 1973; though, it is admitted that the petitioner's services were regularised by the Government,—vide letter dated 18th February, 1980, but since no vacancy of Octroi Mohrar was available, so the petitioner used to be appointed on daily wages. It is also admitted that on 1st June, 1985, petitioner's services were terminated as he had mis-behaved with the Assistant Octroi Superintendent.

4. On the pleadings of the parties, the following issues were settled for decision by me on 21st July, 1986;

- (1) Whether the petitioner is estopped from raising the present dispute by his acts and conducts? OPR.
- (2) Whether this Court has no jurisdiction to try this present reference? OPR.
- (3) Whether the respondent is not an "industry" as defined in section 2(j) of the I.D. Act, 1947 ? OPR.
- (4) As per reference.

5. The petitioner himself appeared as WW-1 and the respondent examined MW-1 Shri Mohan Lal, Head Clerk, MW-2 Shri K.K. Jain, Executive Officer, Municipal Committee, Karnal and MW-3 Shri R.S. Chaudhary, now posted as Administrator, Municipal Committee, Rohtak.

6. Learned authorised representatives of the parties heard. My findings on the issues framed are as below :—

Issues No. 1, 2 & 3:

7. These issues were not pressed at the bar on behalf of the respondent, so these are answered against the respondent.

Issue No. 4:

8. Petitioner's termination was a sequel to a report dated 20th May, 1985, made by the Assisat Octroi Superintendent Mohan Lal MW-1. He reported that on the said date petitioner's duty was on bus stand octroi post and that during the course of inspection he reached the said octroi post around 5-6 p. m. on 19th May, 1985 and found the petitioner asleep inside the octroi post and that the duty of the petitioner is to stand outside and check the persons carrying goods upon which octroi duty was leviable and that he also caught one person Shri Shish Lal carrying goods upon which octroi duty was leviable, who escaped from the octroi post unnoticed because of the negligence of the petitioner. The petitioner was pulled up by Shri Mohan Lal at which the petitioner used unparliamentary language towards Shri Mohan Lal. Report was put up before Shri R.S. Chaudhary, the then Administrator, Municipal Committee, Bhiwani, who passed the order of termination. The order seems to be innocuously worked because Shri Chaudhary simply ordered that no work be provided to the petitioner. Cessation of work amount, to retrenchment. I need not cite authorities on this point, because legal position is settled by a beadroll of authorities. May be that the petitioner was a daily wagger. He was a daily wagger, because no post Octroi Moharar was available, though services of the petitioner have been regularised by the Government of Haryana. This fact is not denied by the respondent, though Shri K.K. Jain, the then Octroi Superintendent was noncommittal on this fact that he does not know as to whether services of the petitioner have been regularised by the Government of Haryana. In the reply filed by the respondent this fact is not denied. Shri R.S. Chaudhary, the then Administrator, Municipal Committee, Bhiwani (known for his integrity, intelligence and industry) was candid enough to admit that the petitioner's appointment as well as termination was against the rules under which employees of the Municipal Committee are recruited. This hardly concerns this Court. This is a situation for which the Government has to find a remedy. It may be possible that the petitioner had misbehaved with the senior officers but the order of the Administrator in not providing him further work and in this way terminating his services was passed in haste. A domestic probe could be conducted into the incident and thereafter if the allegations had been proved, after proper show-cause notice his services could be terminated. No such procedure was adopted. The practice of the employers in firing and firing employees at-will is most deplorable. Under these circumstances, order of termination was patently illegal and not sustainable and the same is set aside. Unfortunately, no date is mentioned upon the demand notice received along with the order of resference but the reference was made to the Court by the appropriate Government in the month of February, 1986. That would mean that the demand notice must have been raised at the latest in the month of November, 1985. Termination order is dated 1st June, 1985. So, delay is just of six months. So, the petitioner cannot be denied the benefits of back wages. So, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 26th February, 1987.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst No. 29-86/420, dated the 5th March, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.